2025:HHC:21725-DB

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.262 of 2010
Reserved on: 26.06.2025
Date of Decision: 8th July, 2025

Shirgul Filling Station

....Appellant

Versus

Kamal Sharma

....Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting? Yes.

For the Appellant	:	**Mr. Bimal Gupta, Sr. Advocate, with Mr. Aman Thakur, Advocate.**
For the Respondent	:	**M/s Rupinder Singh Thakur and Bhavya Sharma, Advocates.**

Rakesh Kainthla, Judge.

The present appeal is directed against the judgment dated 07.05.2010 passed by learned Judicial Magistrate, First Class, Rajgarh, District Sirmaur (learned Trial Court), vide which the complaint filed by the appellant (complainant before the learned Trial Court) for the commission of an offence punishable

2025:HHC:21725-DB

under Section 138 of Negotiable Instruments Act (for short ***"N.I. Act"***) was dismissed. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court for the commission of an offence punishable under Section 138 of the NI Act. It was asserted that the complainant and the accused were known to each other. The complainant is a Manager of Shirgul Filling Station at Sanora in Tehsil Rajgarh. The accused is a registered Government Contractor with HPPWD. He owns various vehicles. The complainant supplied the fuel to the vehicles of the accused with an assurance from the accused to make the payment subsequently. The accused was liable to pay ₹5,00,000/- till 31.03.2008. He issued a cheque of ₹5,00,000/- drawn on UCo Bank Branch Rajgarh to discharge his liability. The complainant presented the cheque before his Bank, but it was dishonoured with an endorsement 'insufficient funds'. The complainant sent a legal notice to the accused asking him to pay the amount within 15 days

2025:HHC:21725-DB

of the receipt of the notice. The accused refused to receive the notice, and it was returned with the endorsement 'refused'. The notice is deemed to be served upon the accused; hence, the complaint was filed before the learned Trial Court for taking action as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of N.I. Act, to which the accused pleaded not guilty and claimed to be tried.

4. The complainant examined Ankur Aggarwal (CW1), Dalip Biswas (CW2) and Dayanand (CW3) to prove its case.

5. The accused in his statement recorded under Section 313 of Cr.P.C. denied the complainant's case in its entirety. He stated that he had not received any notice. He claimed that he was innocent and that a false case was made against him. No defence was sought to be adduced by the accused.

6. Learned Trial Court held that the cheque was issued in the name of Shirgul Filling Station, which is stated to be owned by Shivani Gupta. The complaint was filed by Ankur Aggarwal based

on an authority letter (Ext. 'PX'); however, there was no proof that Shivani Gupta was the proprietor of Shirgul Filling Station. The authority letter was issued after the issuance of the notice and filing of the complaint. The authority letter cannot be construed to be equivalent to a general/special power of attorney. The complaint was not filed by the payee; hence, the complaint was dismissed.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present appeal, asserting that the learned Trial Court erred in holding that Ankur Aggarwal was not authorised to file the complaint on behalf of the proprietor of the Firm. He had duly proved the authority letter (Ext. 'PX'). Even if there was some defect in the authority at the time of the institution of the complaint, it was permissible to rectify the defect during the pendency of the proceedings. The statement of account was not considered by the learned Trial Court. There was sufficient material on record to prove the purchase of the petroleum products by the accused from time to time. The accused had not produced any evidence despite being given an opportunity to do so; hence, the version of the

2025:HHC:21725-DB

complainant remained unrebutted. All the ingredients of Section 138 of the N.I. Act were duly satisfied, therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr. Bimal Gupta, learned Senior Counsel, assisted by Mr. Aman Thakur, learned counsel for the appellant and M/s Rupinder Singh Thakur and Bhavya Sharma, learned counsel for the respondent.

9. Mr. Bimal Gupta, learned Senior Counsel for the appellant/complainant, submitted that the complainant had produced on record the authority letter issued by Shivani Gupta. Learned Trial Court erred in holding that this authority letter was issued after the filing of the complaint, and the complaint was not properly instituted. The defect could have been removed at any time during the pendency of the proceedings. The complaint could not have been dismissed on the technical ground; therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside. He relied upon the judgment titled ***M/s Mohan Meakin Limited vs. M/s Spirit and Beverages L-1*** passed in ***Cr. Appeal No. 592 of 2017*** decided on

2025:HHC:21725-DB

22.06.2018, MMTC ***Ltd. and anr. Vs. Medchl Chemicals and Pharma Pvt. Ltd. and Anr., 2002 (1) SCC 234, Samrat Shipping Co. Lvt. Ltd. Vs. Dolly George, 2002 (9) SCC 455*** and ***Haryana State Cooperative Supply and Marketing Federation Limited vs. Jayam Textiles and anr, 2014 (4) SCC 704*** in support of his submission.

10. Mr. Rupinder Singh Thakur, learned counsel for the accused, submitted that the learned Trial Court had taken a reasonable view while dismissing the complaint. No power of attorney was brought on record to establish the authority of the complainant. There was no evidence that Shivani Gupta was the owner of Shirgul Filling Station; hence, the learned Trial Court was justified in holding that the complaint was not filed by a properly authorised person. This Court should not interfere with the reasonable view of the learned Trial Court while deciding an appeal against acquittal; therefore, he prayed that the present appeal be dismissed. He relied upon ***Milind Shripad Chandurkar v. Kalim M. Khan, (2011) 4 SCC 275, A.C. Narayana versus State of Maharashtra, 2015 (12) SCC 203*** and ***Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217*** in support of his submission.

2025:HHC:21725-DB

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433*** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of the evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed:

> "11. Recently, in the case of ***Babu Sahebagouda Rudragoudar v. State of Karnataka 2024 SCC OnLine SC 4035,*** a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:
>
> > "38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging the acquittal of the accused recorded by the trial court.
> >
> > 39. This Court in ***Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471: (2022) 2 SCC (Cri) 31]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29)

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case ***[Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325],*** SCC p. 432, para 42)

> '42. From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on the exercise of such power and an appellate court, on the evidence before it, may reach its own conclusion, both on questions of fact and law.
>
> (3) Various expressions, such as "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc., are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the

> reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (4) An appellate court, however, must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused, having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
>
> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

40. Further, in ***H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748]*** this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows: (SCC p. 584, para 8)

> "8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence.

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

> 12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

13. A similar view was taken in ***Bhupatbhai Bachubhai Chavda v. State of Gujarat, 2024 SCC OnLine SC 523***, wherein it was observed:-

> "6. It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on the evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. The Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn the order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself to the main question."

2025:HHC:21725-DB

14. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. Ankur Aggarwal (CW1) stated in his cross-examination that Shirgul Filling Station is owned by Shivani Gupta, who has not filed any complaint in the Court. He had not brought any documents to show that he was posted as a Manager or was authorised to file the complaint. He volunteered to say that he had a special power of attorney.

16. Thus, the only evidence on record regarding the ownership of the Shirgul Filling Station is the statement of Ankur Agarwal (CW1), in the cross-examination, that Shivani Gupta is the owner of Shirgul Filling Station. The statement of account (Ext. CW1/A) of the accused-Kamal Sharma, does not mention the name of Shivani Gupta. It was laid down by the Hon'ble Supreme Court in ***Milind Shripad Chandurkar v. Kalim M. Khan*, *(2011) 4 SCC 275***, that where no evidence was led to prove that the complainant was the owner of a proprietorship concern, he cannot be called to be a payee or holder in due course. The Hon'ble Supreme Court noticed the affidavit of the complainant in para-14 as under: -

"**14.** The relevant part of the affidavit filed by the appellant-complainant before the trial court reads as under:

> "I, Shri Milind Shripad Chandurkar, aged about 37 years, Indian inhabitant, occupation: business, proprietor of M/s Vijay Automobiles, having an address at Sector 29, Dronagiri Node, Uran, District Raigad, take oath and state on solemn affirmation as under....
>
> > I state that in due discharge of legal liability of the accused as mentioned in the foregoing paragraphs, the accused issued one cheque dated 28-4-2005 in my name i.e. in the name M/s Vijaya Automobiles which was drawn on Development Credit Bank, Kurla Branch, Mumbai 70 bearing Cheque No. 490592, for ₹ 7,00,000 (Rupees seven lakhs only)."

The relevant part of his cross-examination reads as under:

> "It is true that till today I have not produced any documentary evidence to show that I am the owner of Vijaya Automobiles.... Till today, I have not produced any documentary evidence to support."

17. It was further found that no documentary evidence was produced to show that the complainant was the proprietor of the Firm. It was observed:-

> "**16.** Thus, from the above, it is evident that the appellant-complainant could not produce any document to show that he was the proprietor of Vijaya Automobiles in spite of the fact that the issue had been agitated by the accused-Respondent 1 at every stage. It is also evident from the documents on record that in the list of witnesses, the complainant had mentioned the name of his banker as a witness; however, the said banker was not examined.

> **17.** It may also be pertinent to mention here that the appellant did not make any attempt to adduce additional evidence at the appellate stage. No document has ever been filed to substantiate his averment in this regard."

18. It was held that the complaint can be filed by a payee or holder in due course, and when there was no evidence that the complainant was the proprietor, he was not entitled to file the complaint. It was observed:-

> "**26.** In the instant case, it is evident that the firm, namely, Vijaya Automobiles, has been the payee and that the appellant cannot claim to be the payee of the cheque, nor can he be the holder in due course, unless he establishes that the cheques had been issued to him or in his favour or that he is the sole proprietor of the concern and being so, he could also be the payee himself and thus, entitled to make the complaint. The appellant miserably failed to prove any nexus or connection by adducing any evidence, whatsoever, worth the name with the said firm, namely, Vijaya Automobiles. A mere statement in the affidavit in this regard is not sufficient to meet the requirement of law. The appellant failed to produce any documentary evidence to connect himself with the said firm.
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> **27.** It is evident that the Firm had a substantial amount of business, as in one month it sold the diesel to Respondent 1, a single party, for a sum of ₹ 7 lakhs. The appellant would, in addition, have also been carrying out business with other persons. Thus, a person with such a big business must have had transactions with the bank and must have been a payee of income tax, sales tax, etc. Thus, in such a factual situation, there would be no dearth of material that could have been produced by the appellant to show that he was the sole proprietor of the said firm. The appellant failed to adduce any evidence in this regard, nor made any attempt to adduce any additional evidence at the appellate stage, in

spite of the fact that the respondent had been raising this issue from the initiation of the proceedings."

19. This judgment was followed by this Court in ***S.P. Saklani v. Ravinder Singh Thakur, 2012 SCC OnLine HP 771***, wherein it was observed: -

> "11. Admittedly, a cheque example.CW-3/A is in the name of Thakur Devi Ram & Sons. Cheque returning memo Ex.CW-2/C is also addressed to M/s Thakur Devi Ram & Sons.
>
> 12. True it is that it was averred by the complainant in the complaint that he was running the aforesaid business in the name and style of M/s Thakur Devi Ram and Sons. Though, while appearing as CW-3 in the chief examination the complainant has reiterated the assertion that he is the sole proprietor of M/s Devi Ram and Sons, yet in cross-examination he has admitted that on the day he was making a statement in the court, he was not having any proof that he was the sole proprietor of M/s Devi Ram and Sons. It is further stated that he did not remember when the cement was purchased by the convict. He had also not brought a copy of the bill book to the court. In further cross-examination, he denied that he has any concern with M/s Devi Ram and Sons and has volunteered that Devi Ram is his father.
>
> 13. In his statement under Section 313 Cr. P.C., the convict, denied that the complainant used to deal in the business of steel and cement known as M/s Devi Ram and Sons. He has also denied that cheque Ex.CW-3/A was issued by him in favour of the complainant.
>
> 14. Thus, it is manifest that except the bald assertion made by the complainant in the complaint and reiterated on oath in his deposition as CW-3 that he is the sole proprietor of M/s Devi Ram and Sons, which aspect is vehemently disputed by the convict, there is no other cogent, reliable and trustworthy documentary evidence to prove nexus or

connection of the complainant with the firm M/s Thakur Devi Ram and Sons. The evidence led by the complainant is wholly deficient in content to prove his nexus or connection with the said firm as its sole proprietor and the mere averments in the complaint to this effect as reiterated on oath in his deposition as CW-3, which is vehemently contested on behalf of the convict is not sufficient to establish such nexus or connection, as has been held by the Hon'ble Supreme Court in ***Milind Shripad Chandurkar***, supra."

20. Similar is the judgment in ***Ram Chand v. Rafee Mohammad, 2018 SCC OnLine HP 3334,*** wherein it was observed:-

> "**19.** Now, adverting to the facts of the case, if cheque, Ext. C-1 is perused, it would be noticed that the same has been issued by a partner of the Indian Education Centre and not by the respondent in his name. Moreover, the cheque is in the name of Ramchand and not in the name of Ankit Hire Purchase Pvt. Ltd. The appellant has failed to show that he is the sole proprietor of the firm and has not even pleaded that he is the payee or the holder in due course of the cheque.
>
> **20.** It is more than settled that it is only the holder in due course of a negotiable instrument who is entitled to file the complaint under Section 138 of the Act. (Refer: ***Milind Shripad Chandurkar v. Kalim Khan, (2011) 4 SCC 275, National Small Industries Corporation Ltd. v. State, (2009) 1 SCC 407*** and ***Punjab & Sindh Bank v. Vinkar Sahkari Bank Ltd., (2001) 7 SCC 721***)
>
> **21.** As observed above, the cheque in question Ext.C-1 has been issued by a partner of Indian Education Centre and not by the respondent in his name and the appellant has failed to mention in the complaint or prove in evidence that Indian Education Centre had any connection with him or his establishment or for that matter, even with the respondent. This assumes significance and

> importance when the specific case of the appellant is that the entire exercise of lending money was done for and on behalf of Ankit Hire Purchase Pvt. Ltd., which allegedly was a company, yet no records of the same were produced.
>
> **22.** As a matter of fact, the appellant has filed the complaint as Managing Director of the company, but there is no proof of the same. Even otherwise, having failed to establish the connection between the company of which he claims himself to be the Managing Director with that of Indian Education Centre, whose partner has issued cheque, Ext.C1 and further having failed to establish the connection of the respondent with Indian Education Centre, the learned trial court had no other option, but to have dismissed the complaint and acquitted the respondent."

21. Since in the present case no satisfactory evidence was produced to show that Shivani Gupta is the owner of Shirgul Filling Station, therefore, the learned Trial Court had rightly held that the complainant does not fall within the definition of payee and he was not entitled to file the complaint under Section 138 of N.I. Act. This was a reasonable view taken by the learned Trial Court, duly supported by the judgments of the Hon'ble Supreme Court and this Court; hence, no interference is required with the same.

22. The judgments of ***Mohan Meakin*** (supra), ***Haryana State Cooperative Supply and Marketing Federation*** (supra), ***Samrat***

Shipping Company Pvt Ltd. (supra) and ***MMTC Ltd*** (supra) dealt with the complaint filed by the Company and it was held that since a juristic person can only be represented by a natural person, therefore, the defect in the authorization is not sufficient to dismiss the complaint filed under Section 138 of N.I. Act. In the present case, the complaint was filed by a proprietorship concern, which is equivalent to a natural person[1]; therefore, the cited judgments do not apply to the present case.

23. No other point was urged.

24. In view of the above, the present appeal fails and the same is dismissed, so also the pending applications, if any.

25. Record of learned Trial Court be sent back forthwith.

(Rakesh Kainthla)
Judge

8th July,2024
(Chander)

[1] Shankar Finance & Investments v. State of A.P., (2008) 8 SCC 536